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STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 72-19 (R-51)

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REQUESTED BY: JAMES J. HEGARTY
Secretary-Treasurer, Arizona Law
Enforcement Officers Advisory Council

QUESTION: Does the source of funding affect the peace
officer status of an otherwise duly appointed
and full time deputy sheriff?

ANSWER: No. See body of opinion.

In Department of Law Opinion No. 70-24, the Attorney
General responded to a similar question from the Arizona Law
Enforcement Officers Advisory Council in regard to the status
of a civil deputy sheriff as a peace officer. The conclusion
reached there was as follows:

. . . [I]t is the opinion of this office,
because of the aforementioned authorities, any
title or position involving the use of the term
"Deputy Sheriff" is required to be occupied by
a properly trained and qualified peace officer.

That opinion further noted that the term "peace officer"
contemplates some regular assignment to arduous and hazardous
duty. A.R.S. § 38-842.10. Police Pension Board of City of
Phoenix v. Warren, 97 Ariz. 180, 398 P.2d 892, rehearing
denied, 97 Ariz. 301, 400 P.2d 105 (1965).

Since Opinion No. 70-24 did not speak directly to the
source of funding, particularly funding by non-governmental
agencies, some further discussion is needed. Initially, we
should note several other statutory definitions bearing upon
this problem.

§ 1-215. Definitions

In the statutes and laws of the state,
unless the context otherwise requires:

* * *

20. "Peace officers" mean sheriffs of
counties, constables, marshals and policemen
of cities and towns.

§ 38-1001. Definitions

In this chapter [Chapter 7.--Merit Systems], unless the context otherwise requires:

* * *

4. "Law enforcement officer" means:

(a) A regularly appointed and paid deputy sheriff of a county.

§ 9-901. Definitions

In this article [Article 1. Minimum wages, Chapter 8.--Police and Fire Departments], unless the context otherwise requires:

* * *

3. "Peace officers" include regularly salaried deputy sheriffs, policemen and police officers of duly organized police departments.

In connection with A.R.S. § 9-901, we should also take note of A.R.S. § 9-903, as follows:

This article shall not be construed to apply to a person holding a courtesy or honorary commission in the police, peace officers or fire forces of a city or town, or to persons not appointed in accordance with the rules, regulations, ordinances, charter provisions or statutes concerning appointments to the police, peace officers or fire department to which appointment is claimed, or to those officers employed in part time service.

(All emphasis added.)

It seems that two of the three definitions quoted above, i.e., A.R.S. §§ 38-1001 and 9-901, contemplate regular salary as well as regular appointment. Thus, for the purposes of the merit system and for minimum wages of police departments, the source of funding would affect at least the economic status of the peace officer. However, this is probably not true as a general proposition. A.R.S. § 1-215.20 includes

sheriffs as "peace officers" for general purposes of Arizona law, but deputies are not specifically mentioned. Nevertheless, as noted in Opinion No. 70-24, deputy sheriffs are "generally thought to be possessed with full authority to perform every act the sheriff, his principal, could perform. [Citing authorities.]"

The Arizona Law Enforcement Officers Advisory Council is concerned about the status of deputy sheriffs because of the provisions of A.R.S. § 41-1822, which states that the Council shall prescribe "reasonable minimum qualifications for officers to be appointed to enforce the laws of this state and the political subdivisions thereof." A.R.S. § 11-409 provides the methods by which deputy sheriffs are appointed:

The county officers enumerated in § 11-401 may, by and with the consent of, and at salaries fixed by the board, appoint deputies, stenographers, clerks and assistants necessary to conduct the affairs of their respective offices. The appointments shall be in writing, and filed in the office of the county recorder. (Emphasis added.)

But even where a written appointment was not recorded, our Supreme Court has held that a deputy sheriff is not deprived of de facto status as a public officer. State v. Stago, 82 Ariz. 285, 312 P.2d 160 (1957).

In State v. Stago, supra, Ernest Dillon charged the defendant with resisting and obstructing a public officer. Dillon had been appointed by the Sheriff of Navajo County as a deputy sheriff and issued a card confirming the appointment. However, Dillon was not paid by the county nor was his appointment recorded. He was paid by the Pinetop Merchant Patrol and wore a police officer's uniform. Since the appointment had not been properly filed, the Court held that Dillon was not a de jure public officer. However, for the purposes of the offense of resisting or obstructing a public officer, he was held to be a de facto public officer. This conclusion seems to have been based on two major points: (1) The statute requiring filing of written appointment was directory; and (2) the Navajo County Board of Supervisors had accepted a \$1,000.00 bond executed by Dillon to faithfully perform the duties of a deputy sheriff.

It should also be noted that in the context of the offense of resisting or obstructing a public officer, a police officer is a public officer. State v. Kurtz, 78 Ariz. 215, 279 P.2d 406 (1954); State v. Arce, 6 Ariz.App. 241, 431 P.2d 681 (1967).

State v. Kurtz, *supra*, is another case that aids in answering the Council's main question. There the Court was concerned with the issue of whether duly appointed and acting city policemen, when privately paid and employed during off duty hours, as special officers to maintain order and keep the peace at a dance hall, were "public officers" within the obstructing a public officer statute. The Court decided that the turning point for this issue was whether the officers were "performing mere acts of service for their private employer" or "were acting in vindication of the public right in apprehending a wrongdoer." 78 Ariz. at 219.

State v. Owens, 4 Ariz.App. 591, 422 P.2d 719 (1967), is another case involving the status of a deputy sheriff paid by someone other than the sheriff as a peace officer. There the Court noted that a person must be a peace officer to be authorized to serve a warrant. A.R.S. §§ 1-215.20 and 13-1407. The Court held that two county attorney investigators who had been appointed by the county attorney as deputy sheriffs were not de facto deputy sheriffs nor peace officers. Neither the holding of a deputy sheriff card nor inclusion in a false arrest rider on the county's public liability insurance policy were sufficient to accomplish this either. The Court also made the following relevant comment:

It is our opinion that one of the vital elements in relation to being a de facto deputy sheriff is the matter of instructions from and control by the sheriff or by some law enforcement or security organization or agency. . . .
4 Ariz.App. at 596.

This same idea of instruction and control is carried out to some extent in still another statutory definition of the term "peace officer" as follows:

§ 41-1701. Definitions

In this chapter [Chapter 12.--Public Safety], unless the context otherwise requires:

* * *

5. "Peace officer" means any personnel of the department designated by the director as being a peace officer under the provisions of this chapter.

Although this definition does not have specific application to deputy sheriffs, it is interesting to note that the statutes relating to the Arizona Law Enforcement Officer Advisory Council appear in this same chapter, thus making the definition applicable to those statutes.

The above statutes and cases, reviewed in light of the facts here, where private corporations seek to assist a county in funding another law enforcement officer which they could not otherwise afford, and where said officer is otherwise a duly appointed and fully controlled, regular deputy sheriff, responsible only to the sheriff for his work direction, clearly indicates that such a deputy is a "peace officer" and must meet the minimum standards.

As was alluded to earlier, this opinion does not cover any other relationship which might be governed by the source of salary, i.e., merit system, retirement system, or insurance benefits or coverage. The only question posed and answered is as to the "peace officer" status of a deputy so employed.

Respectfully submitted,

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by F. S.

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